



# DISCIPLINARY AND DISMISSAL PROCEDURES A PRACTICAL GUIDE

## INTRODUCTION

This guide is designed to assist employers in dealing with the revised disciplinary and dismissal procedures which come into effect on 6 April 2009. The new law is contained within the *Employment Act 2008* and this legislation introduces a new regime affecting the vast majority of Employment Tribunal claims from 6 April 2009. It replaces the statutory dispute resolution procedures which were brought into force on 1 October 2004. These procedures along with the statutory grievance procedures were widely viewed as unworkable and have been the source of much complaint by Tribunal users, legal advisers and judges since their introduction.

The new law will be welcomed by employers and advisers alike as, in particular, there will no longer be a finding of automatic unfair dismissal for failing to comply with a technical step in the process. Whilst the Act will give Tribunals a discretion to increase or reduce awards by up to 25% in certain cases, this is not as draconian as the previous system which imposed upon Tribunals a requirement to increase or decrease compensation by between 10% and 50%.

The new reduction rules will provide the Tribunal with more discretion in cases where the employer or employee has unreasonably failed to comply with the new *ACAS Code of Practice on Disciplinary and Grievance Procedures* (referred to throughout this guide as the Code).

Underpinning the new law and regime is the revised ACAS Code which has in fact existed since 1977. Alongside the Code, which is a fairly short document consisting of 9 pages and 45 clauses, is a lengthier document which is a guide to the new Code. This document consists of 74 pages.

This document is intended to provide general advice only and is not intended as a substitute for specific legal advice applying to any given situation. If you are in any doubt then we would recommend that you contact one of our specialist employment lawyers whose details are set out at the end of this guide. We also recognise of course that there are numerous commercial reasons why an employer may wish to dispense with formal procedure and terminate employment in any event and that such situations will normally lead to the employee being invited to sign a compromise agreement. A detailed consideration of the law and procedure which is applicable to such agreements is outside the scope of this guide.

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## SECTION 1

### DISCIPLINARY AND DISMISSAL PROCEDURES

This section sets out the steps which are required whenever an employer is considering dismissal or disciplinary action. The general principle is that the aim should be to resolve the problem whilst retaining the employee in employment. Whilst this may not be possible, the Code (**Appendix 7**) should be followed and a failure to do so without reasonable excuse may render any subsequent dismissal unfair with a resulting increase in compensation by up to 25%.

#### 1. COMMUNICATING DISCIPLINARY (AND GRIEVANCE) PROCEDURES

Employers should issue a written document which sets out their disciplinary rules and procedures. We would advise all clients who have not complied with this requirement already to contact us for advice. An example of such a procedure can be seen at **Appendix 1** to this guide.

The information can either be communicated within the employee's contract of employment or a letter offering employment. Alternatively, the details could be set out in a simple statement of change.

#### 2. INFORMATION WARNINGS/COUNSELLING

If an employee is not performing satisfactorily or is misbehaving at work, the first step should be one of helping them to improve by having an informal discussion about the problem. It should clearly be spelt out what they are doing wrong and what they have to do to come up to standard. Whilst a brief note of the date upon which the issue was discussed and what action was agreed should be taken, this would not be regarded as formal disciplinary action.

#### 3. FORMAL PROCEDURE

If the above issue is not resolved to the employer's satisfaction within a reasonable timeframe or if the matter is more serious, then the situation should be tackled on a formal basis. The employee must be invited in writing to a meeting which is a formal hearing at which they are entitled by law to be accompanied by a colleague or trade union representative. This right applies whether or not the employer recognises a particular trade union for other purposes and should not be refused. A failure to comply with this requirement may mean that a subsequent dismissal is unfair and can also give rise to a separate claim.

#### 4. WHY IS IT IMPORTANT TO FOLLOW THE ACAS CODE?

The Code is intended to help employers and employees deal effectively with issues of alleged misconduct of poor performance in the workplace. When deciding whether an employee has been unfairly dismissed for misconduct or poor performance, an Employment Tribunal will consider whether the employer has followed a fair procedure. In doing so, it must take account of any provisions of the Code that appear to be relevant. This is a statutory requirement.

##### 4.1 It can affect the level of compensation

If an employee brings a successful claim for unfair dismissal or a number of other common types of claim (including those related to discrimination, breach of contract, working time, detriment and deduction of wages) arising out of dismissal or disciplinary action for misconduct or poor performance, the level of compensation awarded to the employee is affected if either party failed to follow the Code. The

Tribunal may increase or reduce compensation by up to 25%. The Tribunal has a broad discretion whether to increase or reduce the award depending upon whether this would be just and equitable.

## **5. WHEN DOES THE ACAS CODE APPLY?**

The Code applies to misconduct and poor performance cases. This is a significant change from the old regime which applied to dismissal for almost any reason. The Code only applies to “disciplinary situations” a concept which includes misconduct and poor performance but which explicitly **excludes** dismissals on grounds of redundancy or the non-renewal of a fixed term contract.

The Code is supplemented by a non-statutory guide which gives further guidance on best practice. Whilst the guide itself does not have to be taken into account by Tribunals, it does contain some useful guidance developed from unfair dismissal case law and therefore employers should not ignore it.

## **6. HANDLING MISCONDUCT OR POOR PERFORMANCE**

The basic principles have not changed so that the employer should investigate the issues. It is an important established principle of unfair dismissal that an employer should carry out a reasonable investigation and this is reflected in the Code. This may involve investigatory meetings with the employee under investigation or it may simply involve the collation of other evidence. Any investigatory meeting should not result in disciplinary action without convening a formal disciplinary hearing.

## **7. THE EMPLOYER SHOULD INFORM THE EMPLOYEE OF THE ISSUES IN WRITING**

If there is a case to answer, the employee should be notified in writing of the alleged misconduct or poor performance in sufficient detail to enable them to respond at a disciplinary hearing. This concept therefore remains similar to the old concept of a step 1 letter. It may still be regarded as a written statement.

### **7.1 The Written Statement**

You must prepare a statement setting out what the employee has done or is alleged to have done or failed to do which may result in disciplinary action or dismissal. The statement should set out the circumstances which have led the employer to take the decision to consider terminating the employment or imposing other disciplinary action. A copy of this statement must be sent to the employee and a meeting arranged to discuss the matter. See **Appendix 2** for a sample letter.

You do not have to put all the details of the employee’s conduct in the written statement. If these details are not all included however, they must be explained before the meeting so that sufficient time is given to enable the employee to consider a response. In practice, we would advise employers to provide all relevant details together with supporting documentation in the written statement which is then sent or given to the employee.

### **7.2 The Hearing**

Detailed guidance on conducting the hearing is set out in Chapter 2 but you should bear in mind the following general principles:-

- 7.2.1 The meeting should be far enough ahead to enable the employee to consider the written statement but there should not be any undue delay. The employee has a duty to take all reasonable steps to attend.
- 7.2.2 The employee has a statutory right to be accompanied to the meeting by a colleague or trade union representative.
- 7.2.3 The meeting must be at a reasonable time and in a convenient location. If the employee or person accompanying is disabled, this must be taken into account and reasonable provision made to ensure that they can participate fully.
- 7.2.4 If you haven't already done so before writing to the employee, you should ensure that a thorough investigation of all the relevant circumstances has been carried out and these should be communicated to the employee before the meeting.
- 7.2.5 After the meeting, you should decide what action, if any, is to be taken and tell the employee and confirm this in writing. At the same time you must offer the employee the opportunity to appeal and set a time limit for the appeal. In this regard, the revised Code does not set down a time limit but it is recommended that 7 days is appropriate. See **Appendix 3** for sample letter.

### 7.3 **The Appeal Meeting**

If the employee wishes to appeal then he or she must inform the employer and a meeting is then arranged to hear the appeal. A sample letter is at **Appendix 4**. The same rules apply to this meeting as to the hearing. Wherever possible a manager more senior than the manager who held the disciplinary hearing should hold the appeal meeting. If the size of the employer makes this impractical, we suggest you seek specialist advice. For example, even in small companies, there will normally be somebody who is available to deal with both the initial disciplinary hearing and the appeal meeting. Following the appeal meeting, you must inform the employee of your decision making clear that this is final or informing of any further right of appeal (unlikely except in large organisations or local authorities). See **Appendix 5**.

## 8. **WHEN DOES THE NEW REGIME APPLY?**

There are transitional provisions governing whether the new or old regime applies. The old regime will continue to apply where the employer has dismissed an employee or taken relevant disciplinary action **before** 6 April 2009. It will also apply where the employer has sent the employee a "step 1" letter or held a "step 2" meeting under the old system before that date. However, in any other case, the new regime will apply from and including 6 April 2009.

## 9. **EMPLOYMENT TRIBUNALS**

If the disciplinary or dismissal procedures are not followed according to the Code, an Employment Tribunal hearing any resulting application would decide whether that is the fault of the employee or employer. As stated already, the compensation payable can be increased or decreased by up to 25%.

We would stress that a tribunal can rule that a dismissal is unfair even if the Code has been followed. The tribunal must also be satisfied that the employer has acted reasonably in all the

circumstances. Whilst the law on unfair dismissal is outside the scope of this guide, a fair dismissal typically involves two key issues.

**9.1 The reason for the dismissal must be one allowed by law and these are as follows:-**

- 9.1.1 Capability or qualifications.
- 9.1.2 Conduct.
- 9.1.3 Redundancy.
- 9.1.4 Contravention of a duty or restriction.
- 9.1.5 Some other substantial reason.

**9.2 The employer must act fairly and the following principles are relevant and indeed are incorporated into the Code.**

- 9.2.1 Procedures should be used to encourage employees to improve rather than just as a means of imposing punishment.
- 9.2.2 Employees must be informed about the complaint and be given an opportunity to state their case before any decision is reached.
- 9.2.3 The employee is entitled to be accompanied at disciplinary and appeal meetings.
- 9.2.4 Employers should not take action until the facts of the case have been established.
- 9.2.5 Employees should not be dismissed for a first disciplinary offence unless this is a case of gross misconduct (see appendix 1 for examples).
- 9.2.6 Employees should always be given an explanation for any disciplinary action taken.
- 9.2.7 Employees must be given the opportunity to appeal.
- 9.2.8 Employers should act consistently.

Employees cannot generally bring a case of unfair dismissal until they have been employed for 12 months or more. Employers should however note that due to the requirement to give a minimum of one week's notice of termination, strictly speaking, the qualifying period is 51 weeks. We would suggest that specific advice is taken in such situations.

There are also some important exceptions to the "12 month" rule and some dismissals are automatically unfair whenever they occur. The exceptions are outside the scope of this guide but in particular, all forms of unlawful discrimination are actionable regardless of length of service.

## 10. POTENTIAL HEADACHES

### 10.1 Involving employees in developing procedures

The Code states that employees and, where appropriate, their representatives (such as a recognised trade union) should be “involved” in the development of disciplinary rules and procedures, and that employers should help employees and managers understand those rules.

The Code is not specific about how to involve employees and does not explicitly require employers to seek employees’ agreement. Neither is it clear why the Code refers to involving employees and their representatives rather than employees or their representatives.

Where an employer has failed to put any written procedures in place, this could technically be a breach of the Code, even if the employer ultimately follows a fair procedure. It is not clear what view Tribunals will take of this, especially where the employee has not suffered any additional injustice as a result.

### 10.2 Evidence at Disciplinary Hearings

The Code recommends two significant steps that are viewed by many as not strictly necessary from an unfair dismissal perspective, even though they were also recommended by the previous (2004) version of the Code. Given the additional compensation that may now flow from an unreasonable failure to follow the Code, employers should consider including these steps unless they feel confident of persuading a Tribunal that it would be reasonable not to do so.

#### 10.2.1 Reviewing the charges and evidence

The Code requires employers at the start of the hearing to “*explain the complaint against the employee and go through the evidence that has been gathered*”. This stage has often been ignored in the past or taken as read, since the employee should already have been given the opportunity to digest this information.

#### 10.2.2 Allowing the employee to call witnesses

Secondly, employees should be given “*a reasonable opportunity to ask questions, present evidence and call relevant witnesses*”. Whilst asking questions and presenting evidence is generally viewed as essential to *natural justice*, *the right to call witnesses to the hearing is not*. *Case law has established that a disciplinary hearing is not a quasi-judicial process and it would usually have been considered sufficient for the employer to interview witnesses (including those whose evidence favours the employee) as part of its investigation, and to rely on their statements at the hearing without having to call the witnesses themselves.*

There is no specific requirement for the employer to call its own witnesses or to allow the employee to cross examine them. The Code does not even explicitly state that employees must be allowed to question their own witnesses directly, merely that they be allowed to “call” them. This may give the employer some control over the conduct of the hearing.

In any event, if the employee challenges the evidence of a witness who is not present at the hearing, an employer should consider adjourning the hearing to re-interview the witness in light of any new information presented by the employee.

### 10.3 Appeals Against Warnings

Under the old system, the statutory procedures did not apply to warnings and therefore there were no further consequences if an appeal against a warning was denied. Under the new law, a failure to allow a right of appeal against any disciplinary action, including a warning, is a breach of the Code. It could therefore increase compensation in the Tribunal if the employee brings a successful claim (such as a victimisation claim) based upon the disciplinary action.

Increasing compensation will only apply to claims by employees.

Where the claim involves a right which is available to a wider category of individual, such as whistle blower protection or protection from discrimination (which is also available to self employed individuals) this may lead to satellite litigation over employment status in cases where this would not usually be an issue.

## SECTION 2

### PUTTING THE DISCIPLINARY PROCEDURE INTO PRACTICE

This section is intended to provide practical tips on how to conduct the necessary investigation, disciplinary hearing and appeal meetings. It does assume that the employer already has in place a written disciplinary and appeals procedure. See **Appendix 1** for an example.

By the very nature of employment law and the variety of businesses to whom we provide advice, we cannot cover every conceivable situation which might arise in your company. However, the general principles set out within this section should apply in most cases.

#### 1. THE IMPORTANCE OF NOTE TAKING

It is essential that comprehensive notes should always be taken whenever carrying out any counselling, investigatory, disciplinary or appeal hearings. Notes should also be taken during any interview conducted with witnesses as part of the investigation.

Wherever possible, it is recommended that a second manager is present at the meeting whose sole function is to take notes. This will ensure that the notes are as accurate as possible. In addition, it is preferable for a different manager to conduct any investigations and the outcome of the investigations would then be passed over to the manager who would proceed to conduct any formal disciplinary hearing. However, this is not always possible in smaller organisations.

The following basic principles should be observed when taking notes :-

- 1.1 Note the date and time of the meeting/hearing and list the names of those present. If the employee declines his or her right to representation this should also be noted.
- 1.2 Record the content of the discussion which takes place. The easiest way to do this is to place initials of the speaker in the margin and then record what is said.
- 1.3 If witnesses are called, a note should be made of their name and of the time at which they joined and left the hearing.
- 1.4 Any adjournments should be noted with the relevant times and reason.
- 1.5 It is good practice to ensure that notes taken during interviews are read through and signed on each page by the employee to acknowledge that he or she agrees that the notes are an accurate reflection of the meeting.
- 1.6 Witness statements collected as part of any investigation should be signed and dated by the witness.
- 1.7 If facilities are available, all notes should be typed up as soon as possible after the hearing/meeting has finished.
- 1.8 **Hand-written notes should always be kept and never thrown away.** We would recommend that one should adopt the principle that the notes together with any hand-written notes may be scrutinised by an employment tribunal and therefore of course may be the subject of cross-examination by the employee's legal representatives. Bearing this in mind should ensure that accurate notes are taken.

## 2. INVESTIGATIVE MEETINGS

Such meetings may be necessary before the formal disciplinary hearing takes place. Strictly speaking, it is not a legal requirement that employees are given the right to be accompanied or represented at such meetings. However, it is good practice. The purpose of investigative meetings is to decide whether the matter in question is sufficiently serious to justify a formal disciplinary hearing. Investigations should be carried out immediately and in serious cases, it will be necessary for the employee to be suspended whilst such investigation takes place.

(See below under “**Suspension**”).

When carrying out investigations, managers should keep an open mind and ask open questions which are typically referred to as the “W” questions. These are *What, Why, When, Where, Who*.

### Example 1

An employee is suspected of having falsified a timesheet or having “clocked on” for a colleague. In this situation, an investigative meeting can be called straight away. The employee should be asked all relevant questions to gather the facts. Based upon the responses, the manager conducting the interview can decide if he or she is satisfied with the responses. If so, the employee would return to work as normal. If not, the manager would most likely suspend the employee pending further investigation and a disciplinary hearing. All relevant paperwork can be gathered and then provided to the employee in advance of the hearing.

### Example 2

Two employees are fighting in the warehouse and the situation is clearly very heated. A manager stops the fight and suspends the two employees but before leaving the premises they should be given a date and time to report for an investigative meeting. It may be possible to hold this straight away depending upon how heated the situation becomes. In any event, the investigation can start immediately because any witnesses to the event can be interviewed.

In this situation, it is clear from the beginning that there has been a serious breach of disciplinary rules as fighting will be listed in the disciplinary procedure as an example of gross misconduct. Whilst an investigation is necessary in order to understand the events which led to the fight, the fact that it was taking place cannot be in dispute.

The employees concerned would remain suspended until the investigatory interviews have taken place. If the decision is then taken to progress to a disciplinary hearing, the employees may again remain suspended until this time. In this example it should be noted that each should be seen and dealt with separately

## 3. SUSPENSION

It is important to understand that suspension should not be seen as an indication that the employee is “guilty”. Suspension should always be with pay and should be confirmed in writing. (See **Appendix 2** for sample letter). If it is not possible to give the letter to the employee before they leave, this must be done without delay and sent by some secure method of delivery or preferably, delivered by hand.

Suspension should be for as short as possible although sufficient time must be allowed for a full and thorough investigation. Every effort should also be made to keep the matter as

confidential as possible especially if the issue involves allegations of sexual harassment or misconduct or matters of a sensitive nature

### **3.1 Reasons to Suspend**

- 3.1.1 To allow a full and detailed investigation to take place.
- 3.1.2 To allow employees to cool off if there has been an emotional or heated situation.
- 3.1.3 Where the colleague is in an unfit state for example under the influence of drink or drugs.
- 3.1.4 Where there is a possibility that the outcome may be summary dismissal following allegations of gross misconduct.
- 3.1.5 Where it is believed that the employee will cause harm to the business or interfere with evidence or witnesses if they are allowed to remain at work.

The employee should be informed of the suspension on full pay and the reasons for this. These reasons should be clearly explained and they should then be informed what the next stage will be.

## **4. DISCIPLINARY HEARINGS**

### **4.1 Basic Principles**

These are often referred to as the principles or rules of “natural justice” and will be taken into account by employment tribunals. These are broadly as follows :-

- 4.1.1 The employee must know the nature of the allegations made against them. This should be clearly stated in the letter inviting them to attend the hearing.( see appendix 2).
- 4.1.2 The employee must be given the opportunity to state their case and to challenge any evidence.
- 4.1.3 The employee must of course be given the right to be accompanied or represented by a colleague or trade union representative.
- 4.1.4 Both the employee and any representative must be provided with all the information relating to the case and this should be done before the hearing and allowing sufficient time for them to fully consider the information and to prepare for the hearing. Such information would for example include :-
  - Copies of witness statements signed and dated.
  - Reports and notes from earlier meetings.
  - Copies of any relevant evidence such as till receipts/timesheets or other documents.
  - The opportunity to review any available video evidence.

## 4.2 CONDUCTING THE HEARING

The hearing should take place in private and the appropriate manager should conduct or chair the hearing. It is important in this context that the manager conducting the hearing is a manager who is authorised to do so by reference to the written disciplinary procedure or by reference to his/her status or seniority. Because of the statutory right of appeal, the manager conducting the initial hearing should not be more senior than the manager to whom any appeal would lie. It is recommended that the following structure is adopted :-

### **Statement of Complaint**

Everyone present should be introduced and their roles explained. The purpose of the hearing should then be explained and if the employee does not have representation, they should be reminded of their rights and if necessary, an adjournment may be necessary whilst a representative is arranged. As stated already, a note should be taken if the employee continues to decline representation. The allegations should then be stated in full and any witness statements read out. At all times, the employee and the representative should be allowed to comment on the evidence and question any witnesses who are willing to attend. In addition, any new information which comes to light should always be fully investigated even if this means having to adjourn in order to do so.

### **Employee Response**

The full response should be noted and as indicated above, the employee must be allowed to challenge the evidence, if necessary by questioning witnesses. In extreme situations, witnesses may have expressed a wish or preference for their identity to remain confidential in which case the employee can simply raise issues in connection with the anonymised witness statement. These situations will be very rare and we recommend that specific advice is taken.

### **General Questions and Discussion**

This stage should be used to consider whether any further adjournment is required and to ensure that all necessary evidence has been considered and that the employee has confirmed that they have raised all matters which they wish to raise.

### **Summing Up**

This step can be used to gain agreement to the notes which will then avoid disputes at a later stage as to whether the notes are a true reflection of what was said. The notes can then be signed by the employee and preferably also by the representative. However, if an employee refuses to sign to signify agreement, they should not be forced to do so or penalised in any way for the refusal alone.

### **Adjournment**

The hearing should be adjourned as often as is necessary but it is absolutely essential that there is a clear adjournment before the decision is made about any disciplinary action. This adjournment should take place in the absence of the employee. It is suggested that an adjournment of at least 15 minutes is taken in order that full consideration can be given to all the issues. The length of adjournments should be noted so that the time of both adjourning and reconvening is recorded. Clearly, the length of any adjournment must reflect the complexity of the case and the seriousness

of the allegation. In appropriate cases, it will be necessary to adjourn “overnight” to enable full consideration to take place.

#### 4.3 **MAKING A DECISION**

In coming to a decision, a number of factors will be relevant but these may include the following especially where alleged misconduct is disputed :-

- Do you believe that the employee is “guilty”?
- Is that belief based on reasonable grounds?
- Are those grounds based upon a thorough investigation?
- If the facts are in dispute, which version is most probable? In other words, on balance who do you believe?

#### 4.4 **COMMUNICATING THE DECISION**

Once a decision has been reached, the hearing should be reconvened and the employee informed of the outcome. This can be done verbally or simply in writing. However, all verbal communications should then be confirmed in writing. The employee should also be informed of their right of appeal and how this right should be exercised (see **Appendix 3**).

If the disciplinary action takes the form of a warning, the type of warning should be specified, namely verbal, written or final written and for how long the warning remains “live” by reference to the disciplinary procedure. The employee should also be informed of what improvement is required and any appropriate timescale.

Finally, they should be advised that any future acts of misconduct or poor performance may result in the next stage of disciplinary procedure being invoked.

When the decision is confirmed in writing, the employee should ideally also be sent copies of the notes of the disciplinary hearing.

#### 4.5 **APPEAL HEARINGS**

As we have stated, the law requires employees to be given the right to appeal against any penalty/disciplinary warning imposed. This should be within the timescale set out in the formal procedure. Employees should be requested to state their grounds of appeal and any necessary appeal hearing should then be convened as soon as possible. The purpose of the appeal hearing is essentially as follows:-

- To review the reasonableness of the penalty.
- To consider any new evidence that has come to light since the original hearing.
- To rectify any procedural errors (e.g. witnesses not interviewed or representation not offered).

In cases of serious procedural error, it may be necessary for the appeal hearing to take the form of a complete re-hearing in which case the further right of appeal will still be appropriate. In such instances, we recommend that you seek detailed advice.

The general principles to be followed for the purpose of conducting a disciplinary hearing will also apply to an appeal hearing. Following the adjournment to consider all matters raised, the outcome may be as follows:-

- The original decision is upheld.
- In cases other than dismissal, a lower penalty is substituted where the appeal manager believes that the original disciplinary action was too harsh.
- In dismissal cases, reinstatement may be offered and the colleague has the opportunity to accept or not. Reinstatement cannot of course be enforced upon the colleague once the employment has been terminated. Reinstatement may be coupled with the imposition of a lesser penalty such as a final written warning. Reinstatement should also be with “back pay”, continuity of service and all other rights preserved. The offer of reinstatement should be made in writing and should require the employee to confirm their acceptance in writing within 7 days. In some cases and depending upon the nature of the business, it may be appropriate to offer reinstatement to a different department or section of the business. (See **Appendix 5** for sample letter confirming outcome of appeal hearing).

## **5. RESIGNATION BY EMPLOYEE DURING THE PROCEEDINGS**

It is quite common for employees to offer to resign during an investigatory or disciplinary hearing before the final outcome is determined. It is essential that certain steps are observed in order to minimise the risks of a constructive dismissal claim.

If resignation is offered by the employee, it is not for the employer to choose whether to accept this. However, any letters of resignation must be written by the employee and not by the employer. It is also suggested that the employee is given sufficient time in which to consider their decision to resign and a “cooling off” letter may be appropriate. (See **Appendix 6**).

## **6. POLICE INVOLVEMENT**

Police involvement is rare in employment disciplinary situations and will only be appropriate in very serious cases of assault or theft/fraud. However, the priority of the employer should be to deal with the employee first before making a decision to involve the police.

Whilst allegations of theft or serious assault may involve police enquiries employers should always begin with an investigation with the employees concerned followed by suspension if appropriate. It may be thought necessary to inform the police depending upon the amount involved, the extent of any deception in terms of the number of instances or if the employer has reason to believe that the employee has goods or money belonging to the employer at their home.

If the police detain the employee, this will obviously prevent their attendance at any interviews and will delay the internal process. It should be borne in mind that the decision to dismiss should always be taken on the basis of internal investigations and therefore, to that extent, action taken by the police is not necessarily justification for dismissal. Because of the added complications that police or other official involvement causes, we recommend that specific advice is taken in any such situation.

## **APPENDIX 1**

### **SAMPLE DISCIPLINARY PROCEDURE**

#### **DISCIPLINARY & GRIEVANCE RULES & PROCEDURES**

##### **1. DISCIPLINARY PROCEDURE**

The purpose of the Company's Disciplinary Rules and Procedures is to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance and to ensure that any failure to observe the Company's Rules is fairly dealt with. These rules and procedures do not form part of your Contract of Employment.

All cases of Disciplinary Action under these procedures will be recorded and placed with the Company's records.

###### **1.1 Investigation**

No action will be taken by the Company before a proper investigation has been undertaken relating to the circumstances of the matter complained of. If appropriate the Company may, by written notice, suspend you from work for a specified period during which time such an investigation will be undertaken. If you are suspended, your Contract of Employment will be deemed to be continued together with all your rights thereunder including the payment of salary/wages. During the period of suspension, however, you will not be entitled to access to the Company's premises, except with the prior consent of a Director in the Company and subject to such conditions as he/she may impose.

###### **1.2 Disciplinary Hearing**

If, under these procedures, the Company decides to hold a Disciplinary Hearing relating to the matter complained of, you will be given details of the complaint against you at least 2 working days before any Disciplinary Hearing takes place. At any Disciplinary Hearing you will be given an opportunity to state your case and you are also entitled to be accompanied by a fellow employee of your choice or a trade union representative.

1.3 **Offences under the Company's Disciplinary Procedures fall into two categories:-**

**MISCONDUCT**

Examples of misconduct are as follows:-

- (a) Bad time-keeping;
- (b) Unreasonable or unexplained absence;
- (c) Persistent or irregular absenteeism;
- (d) Minor damage to the Company's or any client's Property;
- (e) Smoking in a no smoking area;
- (f) Misuse of Company property;
- (g) Non-submission of medical certificate;
- (h) Use of obscene or offensive language;
- (i) Unsatisfactory job performance.

The list is not intended to be exhaustive.

The following procedures will apply to all cases of alleged misconduct:-

**Verbal Warning**

If conduct or performance is unsatisfactory, you will be given a formal verbal warning which will be recorded and will remain on your file for a period of 3 months but, subject to satisfactory conduct or performance, will be removed from your record following the expiry of that period.

**First Written Warning**

If the offence is of a more serious nature or if, following a verbal warning your conduct or performance is still unsatisfactory, a first written warning will be given to you which will state the reason for the warning and will require an improvement in your conduct or performance within a stipulated time period, failing which further disciplinary action will be taken. A written warning will remain on your file for a period of 6 months but, subject to satisfactory conduct and performance, will be removed from your record following the expiry of that period.

**Final Written Warning**

If the offence is very serious, but does not amount to gross misconduct or if, following a first written warning, your conduct or performance is still unsatisfactory, a final written warning will be given which will state the reason for the warning and will require an improvement in your conduct or performance, failing which, further disciplinary action will result which could ultimately lead to dismissal. This warning will remain on your file for a period of 12 months but, subject to satisfactory conduct and performance, will be removed from your file following the expiry of that period.

## **Dismissal**

If following a final written warning, there is no satisfactory improvement in your conduct or performance, you will be dismissed.

NB: In relation to the above, the Company reserves the right to instigate the procedure at any stage that it feels to be appropriate and/or, if necessary, to omit any particular stage depending upon the severity of the misconduct or failure to perform.

## **GROSS MISCONDUCT**

### **Examples of gross misconduct are as follows:-**

- (a) Theft or attempted theft;
- (b) Physical assault;
- (c) Gross insubordination;
- (d) Abusive behaviour;
- (e) Breach of duty of confidentiality;
- (f) Sexual or racial harassment or harassment on grounds of disability, sexual orientation, religious belief or age ;
- (g) Violent conduct on Company premises;
- (h) Vandalism or wilful damage to Company's or client's property;
- (i) Serious breach of health and safety rules or procedures;
- (j) Making false or fraudulent claims against the Company or attempting to do so;
- (k) Sale and/or consumption of alcohol or drugs on Company premises or being under the influence of alcohol or drugs at work or whilst in possession or control of a Company vehicle;
- (l) Failure to comply with lawful and reasonable instructions;
- (m) Any conduct or behaviour which in the opinion of the Directors of the Company may bring the Company's name into disrepute;
- (n) The sending or downloading of pornographic or otherwise offensive or abusive material via the company's IT systems.

### **1.4 Authority to Impose Disciplinary Action**

In view of the size and nature of the Company and its business, all disciplinary action will be carried out by a director.

## 1.5 Appeals

If you wish to appeal against any disciplinary action taken against you, you should do so in writing within 5 days of the decision being notified in writing to you. Your appeal should set out the ground and should be addressed to ♦ who will then notify you of details of the appeal hearing. This will be conducted by another director who has not been involved in the initial decision

## 2. GRIEVANCE PROCEDURE

The Company will try to resolve as quickly as possible any grievance you may have about your employment. Your first step is to raise any grievance with the person to whom you immediately report, who in most cases will be best placed to respond to your complaint.

If however, the matter cannot be satisfactorily resolved using the above informal procedure, you should within 5 working days of your complaint set out your grievance in writing and send a copy to ..... You will then be invited to a meeting with ..... He/she will try to agree a satisfactory solution with you and will confirm any decision/proposed action to you, in writing, within 5 working days of your meeting. If further enquiries need to be made, you will be notified of this. You will be promptly informed of the outcome of the enquiries.

If you are dissatisfied with the outcome, you have the right to appeal to another director who has not been involved. You should set out the grounds of your appeal in writing to ..... He/she may arrange to see you in order to discuss the matter fully and to try and reach a satisfactory solution failing which a meeting will then be arranged to hear your appeal. This meeting will be conducted by .....and you will be informed of the decision within 5 working days of this meeting.

If your grievance lies with your manager/head of department.....will be available for guidance in the first instance. There may be circumstances where you would prefer to discuss your grievance with someone of your own sex. If this applies, you should contact .....who will advise you of the name of someone with appropriate authority.

You may be accompanied to meetings at any stage of the grievance procedure by a fellow employee of your choice or trade union representative.

## APPENDIX 2

### INVITATION TO DISCIPLINARY HEARING/SUSPENSION LETTER

Dear Employee

I refer to our meeting on [ ], when we discussed the issue of [ ]. I am now writing to confirm that you are requested to attend a formal disciplinary hearing, the details of which are as follows

Date:

Time:

Venue:

Mr/Mrs [title] will conduct the hearing, which will be convened in accordance with the company's formal disciplinary procedure, a copy of which is enclosed for your ease of reference. At the hearing, you will be asked to respond to the following allegations:

*(Set out allegations).*

I also enclose the following supporting documentation/witness statements (set these out).

The purpose of the disciplinary hearing will be as follows:

1. To explain the allegations against you and to present all the evidence.
2. To listen to your response.
3. To decide what disciplinary action, if any, is appropriate in accordance with the company's disciplinary procedures.

If you require, you will have the opportunity to both call and question witnesses. *(This may not be appropriate, depending upon the subject matter of the allegation, as some witnesses may not be prepared to come forward and some witness statements may be anonymised in, for example, cases of serious sexual harassment).*

You have the right to be represented at the hearing by either a colleague or a Trade Union representative of your choice. If you wish to be represented then would you please let me know as soon as possible who your representative will be.

*(optional, depending on circumstances):* In the meantime, as confirmed at our meeting on [ ], you are suspended from work and are requested not to enter any company premises, nor to have contact with any company clients or customers without obtaining permission from [ ]. You are also requested not to have contact with any colleagues except for the purpose of preparing your case for the disciplinary hearing. If you have any queries concerning the issue of your suspension then please do not hesitate to contact me.

I should be obliged if you would confirm if you will be attending the disciplinary hearing as above.

Yours sincerely

### APPENDIX 3

#### LETTER CONFIRMING DISMISSAL/DISCIPLINARY WARNING

I am writing to confirm the outcome of the disciplinary hearing which was conducted on [date]. Present at the hearing, conducted by [ ] were [ ] and [ ] etc. I enclose a copy of the notes of the hearing which have now been typed up. The hearing was called following the meeting/investigatory interview on [ ] and in order to deal with the allegations made against you. These allegations were as follows: (set these out).

You declined/accepted your right to be represented (*delete as appropriate*).

I opened the hearing by confirming the allegations and presenting evidence in the form of [ ]. I also informed you of (*set out any other matters*). In reply, you stated as follows (*set the substantive points out*).

I then adjourned the hearing at [ ] in order to consider the evidence and my decision. At [time] the hearing reconvened and I informed you of my findings as follows; (this may need to be adapted if a decision was not made at the hearing or indeed if the hearing was adjourned to another date to deal with other evidence).

Having looked at all the evidence and having taken into account your representations, I made the following findings: (*set these out*).

In the circumstances and based upon these findings, I confirm that I regard your behaviour as gross misconduct, the penalty for which is summary dismissal in accordance with the company's disciplinary procedure. The effective date of termination of your employment is [ ] and all monies owed to you up to and including this date, together with any accrued holiday pay, will be forwarded to you in due course. Please contact [ ] in order to collect your personal effects.

(*If not summary dismissal*): I would confirm that I decided to issue you with a verbal/written/final written warning and this warning will stay upon your file for [ ], after which time it will be disregarded.

Finally, the hearing closed with me reminding you of your right to appeal against my decision. This should be done in writing to [ ], clearly stating the grounds for your appeal, and your letter should arrive within [ ] days from the date of this letter. I will then arrange for [ ] to hear your appeal, and his/her decision will then be final.

Yours sincerely

## **APPENDIX 4**

### **INVITATION TO DISCIPLINARY APPEAL HEARING**

Dear Employee

I refer to your letter of appeal dated [ ] in which you appealed against [ insert details of warning or dismissal ]. I have arranged an appeal hearing the details of which are as follows:-

Date:

Time:

Venue:

This hearing will be conducted by [ ].

The purpose of the appeal hearing is as follows :-

- To listen to your reasons for appealing against the decision and to consider any new information which has become available since that date.
- To review whether the decision reached was fair and reasonable in all the circumstances.

You have the right to be represented at this hearing by either a colleague or trade union representative. If you choose to be represented, please let me know as soon as possible who this will be. If you have any queries or if there is any problem with attending on the above date then would you please contact me as soon as possible.

Yours sincerely

## APPENDIX 5

### LETTER CONFIRMING OUTCOME OF APPEAL HEARING

Dear Employee

I am writing to confirm the content and outcome of the appeal hearing which was conducted on [ ]. Present at the hearing conducted by myself were [ *set out persons present* ].

Following an explanation of the purpose and objectives of the appeal, I invited you to outline your grounds which may be summarised as follows :-

[ *Summarise grounds for appeal and refer to any written statement which may be presented* ].

Following some discussion and questioning of the evidence presented, the hearing then adjourned at [ ] to allow for further investigation. The hearing reconvened at [ *time* ] or on [ *date* ] and further clarification was given relating to [ ].

I then adjourned the hearing again at [ *time* ] and I advised you that I would contact you with my decision following full deliberation of the evidence presented. [ *This may have taken place at the end of the hearing following an adjournment on the same day* ].

My findings are as follows :-

[ *Summarise findings* ].

Based upon these findings, I advised you that [ *insert the initial decision* ] is upheld (or) your dismissal has been overturned and you are offered reinstatement on the following terms :-

[ *Insert terms* ]. *This may include the insertion of a decision to impose a lower form of warning.*

The hearing closed with me reminding you that you have no further right of appeal under the company's procedure and therefore my decision is final.

Yours sincerely

## APPENDIX 6

### “COOLING OFF” LETTER FOLLOWING RESIGNATION BY EMPLOYEE

Dear Employee

Thank you for your letter of resignation dated [ ] confirming the termination of your employment with the Company with effect from [ ].

Although I am sure that you will have considered the matter carefully before deciding to tender your resignation, given the circumstances, I am quite prepared to allow you a few more days to reflect upon your decision. Should you wish to discuss matters further then please do not hesitate to contact either myself or [ ].

Should you wish to withdraw your resignation, I will of course have to rearrange the investigatory interview/disciplinary hearing with you which was due to take place on [ ].

If I do not hear from you by [ *suggest 3 days* ] then I will arrange for any monies owing to be forwarded to you and your P45 will subsequently be posted to your home address. I should be obliged if you would arrange to return all company property including [ ]. Please either contact myself or [ ] in this regard.

Yours sincerely

**APPENDIX 7**

**ACAS CODE OF PRACTICE**

**Code of Practice 1**

**Disciplinary and Grievance  
Procedures**

# Foreword

The Acas statutory Code of Practice on discipline and grievance is set out at paras 1 to 45 on the following pages. It provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace. The Code does not apply to dismissals due to redundancy or the non-renewal of fixed term contracts on their expiry. Guidance on handling redundancies is contained in Acas' advisory booklet on Redundancy Handling.

The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid before both Houses of Parliament on 9 December 2008. It comes into effect by order of the Secretary of State on 6 April 2009 and replaces the Code issued in 2004.

A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Tribunals will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code. This means that if the tribunal feels that an employer has unreasonably failed to follow the guidance set out in the Code they can increase any award they have made by up to 25%. Conversely, if they feel an employee has unreasonably failed to follow the guidance set out in the code they can reduce any award they have made by up to 25%.

Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible employers and employees should consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation but could be an internal mediator, so long as they are not involved in the disciplinary or grievance issue. In some cases, an external mediator might be appropriate.

Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve an issue. However, where an issue cannot be resolved informally then it may be pursued formally. This Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most instances.

Employers would be well advised to keep a written record of any disciplinary or grievances cases they deal with.

Organisations may wish to consider dealing with issues involving bullying, harassment or whistleblowing under a separate procedure.

More comprehensive advice and guidance on dealing with disciplinary and grievance situations is contained in the Acas guidance booklet, "Discipline and Grievances at Work: The Acas Guide". The booklet also contains sample disciplinary and grievance procedures. Copies of the guidance can be obtained from Acas.

Unlike the Code employment tribunals are not required to have regard to the Acas guidance booklet. However, it provides more detailed advice and guidance that employers and employees will often find helpful both in general terms and in individual cases.

# THE CODE OF PRACTICE

## INTRODUCTION

1. This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

- Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.

- Grievances are concerns, problems or complaints that employees raise with their employers.

The Code does not apply to redundancy dismissals or the non renewal of fixed term contracts on their expiry.

2. Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.

3. Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code.

4. That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act **consistently**.
- Employers should carry out any necessary **investigations**, to establish the facts of the case.
- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.
- Employers should allow an employee to **appeal** against any formal decision made.

## DISCIPLINE

### Keys to handling disciplinary issues in the workplace

#### Establish the facts of each case

5. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

6. In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.
7. If there is an investigatory meeting this should not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right may be allowed under an employer's own procedure.
8. In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.

#### **Inform the employee of the problem**

9. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.
10. The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.

#### **Hold a meeting with the employee to discuss the problem**

11. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.
12. Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this.

#### **Allow the employee to be accompanied at the meeting**

13. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in
  - a formal warning being issued; or
  - the taking of some other disciplinary action; or
  - the confirmation of a warning or some other disciplinary action (appeal hearings).
14. The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.
15. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.
16. The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with

the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

### **Decide on appropriate action**

17. After the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing.
18. Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a written warning. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning.
19. If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.
20. A first or final written warning should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale). The employee should be told how long the warning will remain current. The employee should be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a final warning. For instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.
21. A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.
22. Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.
23. Disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence, gross negligence or serious insubordination.
24. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.

### **Provide employees with an opportunity to appeal**

25. Where an employee feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and ideally at an agreed time and place. Employees should let employers know the grounds for their appeal in writing.
26. The appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case.
27. Workers have a statutory right to be accompanied at appeal hearings.
28. Employees should be informed in writing of the results of the appeal hearing as soon as possible.

## **Special cases**

29. Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
30. If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.

# **GRIEVANCE**

## **Keys to handling grievances in the workplace**

### **Let the employer know the nature of the grievance**

31. If it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.

### **Hold a meeting with the employee to discuss the grievance**

32. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received.
33. Employers, employees and their companions should make every effort to attend the meeting. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.

### **Allow the employee to be accompanied at the meeting**

34. Workers have a statutory right to be accompanied by a companion at a grievance meeting which deals with a complaint about a duty owed by the employer to the worker. So this would apply where the complaint is, for example, that the employer is not honouring the worker's contract, or is in breach of legislation.
35. The chosen companion may be a fellow worker a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.
36. To exercise the right to be accompanied a worker must first make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.
37. The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not however, have the right to answer questions on the workers behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

### **Decide on appropriate action**

38. Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they are not content with the action taken.

### **Allow the employee to take the grievance further if not resolved**

39. Where an employee feels that their grievance has not been satisfactorily resolved they should appeal. They should let their employer know the grounds for their appeal without unreasonable delay and in writing.
40. Appeals should be heard without unreasonable delay and at a time and place which should be notified to the employee in advance.
41. The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case.
42. Workers have a statutory right to be accompanied at any such appeal hearing.
43. The outcome of the appeal should be communicated to the employee in writing without unreasonable delay.

### **Overlapping grievance and disciplinary cases**

44. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

### **Collective grievances**

45. The provisions of this code do not apply to grievances raised on behalf of two or more employees by a representative of a recognised trade union or other appropriate workplace representative. These grievances should be handled in accordance with the organisation's collective grievance process.

**For further information on any of the topics raised in this guide please contact:**

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